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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

OA 196/2009

Dated this the 1st day of March, 2011

CORAM

HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER

1. C. Heda son of Shri Badhrilal Heda,
Aged about 52 years, resident of 3-DH-24,
Prabatnagar, Hiranmagri, Sector No.5,
Udaipur at present employed on the post of
Senior Accounts Officer (Cash),
In the office of GMTD BSNL, Hiranmagri,
Sector No.4, Udaipur.

...Applicant

(By Advocate Mr. J.K. Mishra)

Vs.

1. Bharat Sanchar Nigam Limited through
Its Chairman & Managing Director,
Corporate Office, Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane,
Janpath, New Delhi.110 001.

2. The Director (Finance)
Bharat Sanchar Nigam Limited
(A Govt. of India Enterprises)
BSNL Corporate Office,
Bharat Sanchar Bhavan,
Janpath, New Delhi-110 001.

3. The Chief General Manager,
Telecommunication, BSNL,
Rajasthan Circle, Sardar Patel Marg,
Jaipur-08.

.....Respondents

(By Advocate Mr. Vijay Bishnoi)

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ORDER

Applicant J.C.Heda who is presently posted as Senior Accounts Officer (Cash) in the office of GMTD, BSNL, Udaipur has preferred this Original Application for granting of following reliefs:

- (a) That impugned charge sheet dated May 2003 (Annexure.A1), penalty order dated 12.6.2004, Annexure.A2 issued by 3rd respondent imposing the penalty of withholding of increment for one year without cumulative effect and appellate order dated 20.10.2006, passed by 2nd respondent rejecting the appeal and communicated vide 3rd respondent's letter dated 29.6.2009 (Annexure.A3) may be declared illegal and the same may be quashed. The respondents may be directed to allow all consequential benefits to the applicant as if none of the impugned orders were ever in existence
- (b) That another direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (c) That the costs of this application may be awarded.

2. The brief facts of case are as follows.

Applicant was initially appointed to the post of Telephone Operator Banswara in P&T Department in the year 1979. In the year 1993 he was promoted to the post of Junior Accounts Officer and then in the year 2002 he was promoted to the post of Senior Accounts Officer. In the year 2001 on the advise of the applicant, the GMT allotted tender for laying U/G cable in Banswara SSA to M/s Mangal Construction & Co. as the said company was the lowest bidder. The work was executed satisfactorily. Meanwhile the then GMT, Udaipur who had allotted the tender to M/s Mangal Construction & Company was transferred and the new incumbent GMT joined who had some difference with the outgoing GMT and so he started reviewing the

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cases finalized by the then GMT. Against this background on 15.5.2002 a letter was issued to the applicant asking him to give his comments with regard to certain lapses in the allotment of work to M/s Mangal Construction & Company. A copy of the said letter is Annexure.A5. Thereafter on 31.5.2002 the applicant submitted reply of the said letter explaining the circumstances under which he gave his advice. A copy of the reply of the applicant is Annexure.A6. Thereafter the applicant was issued with charge sheet for minor penalty under Rule 16 of CCS (CCA) Rules, 1965. The said Charge Sheet is Annexure.A1 in the case. In reply to the charge sheet the applicant submitted two detailed representations dated 4.6.2003 and 9.6.2003 (Annexure.A7 and A8 respectively). However his defence was not accepted and the third respondent passed the order of penalty of withholding one increment for one year without cumulative effect vide order dated 12.1.2004 (Annexure.A2) After passing the punishment order by the disciplinary authority, the applicant preferred appeal (Annexure.A9) before the 2nd respondent, but the 2nd respondent vide order dated 20.10.2006 (Annexure.A3) rejected the appeal of the applicant without discussing any point and this gave rise to the filing of the OA.

3. On filing of the application notices were issued to the respondents and in compliance of the notice the respondents appeared in this case through lawyer and filed reply of the OA. The main contention of the respondents is that after cancellation of the tender and forfeiture of EMD of M/s Mangal Construction & Company by the competent authority, the reconsideration of the allotment of tender to the said company was ordered by the GMT due to

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the wrong advice given by the applicant. Further contention of the respondents is that for the above charges a charge sheet was duly issued to the applicant as per rule and the applicant was given full opportunity of being heard and to explain the charge and accordingly he submitted his detailed explanation which was duly considered by the disciplinary authority. Further contention of the respondents is that the disciplinary authority was legally empowered to scrutinize the points urged by the applicant in his reply and accordingly the disciplinary authority duly scrutinized all the points which is evident from the order of the disciplinary authority, whereby the disciplinary authority found the applicant guilty of the charges. It is stated that so far as this case is concerned no procedural lapse or illegality was committed by the respondents and so as per the settled law the Tribunal cannot interfere with the order of disciplinary authority or appellate authority.

4. Shri J.K.Mishra, advocate appeared in the case on behalf of the applicant whereas Shri Vijay Bishnoi, advocate appeared for the respondents. Heard the arguments of both the lawyers. During the course of arguments the learned advocate of the applicant submitted that the applicant is not the competent authority to accept or reject the tender, rather the GMT, Udaipur was the competent authority to accept the tender. He submitted that so far the applicant is concerned, he in good faith simply gave his advice that M/s Mangal Construction & Company is the lowest bidder and the said company being genuine one can be allotted work. The learned advocate submitted that if the applicant would have given any wrong advice, then the

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GMT Udaipur was the competent authority to reject the said advice. So the charge leveled against the applicant itself is baseless and on such baseless charge no punishment could have been given to the applicant. Against this, the arguments of the learned counsel of the respondents is that as per the charge sheet issued against the applicant, the applicant was charged that after cancellation of tender and forfeiture of EMD of M/s Mangal Construction & Company by the competent authority the applicant gave advice to GMT for reconsideration of the same which is totally irregular, ultra vires and also given with ulterior motive which showed that the applicant failed to maintain absolute integrity, exhibited lack of devotion to duty and exhibited in a manner unbecoming of government servant thereby violating Rule 3(1)(i), (ii)&(iii) of CCS (Conduct) Rules, 1964. His contention is that on the said charge the applicant was given full opportunity of being heard and the applicant also submitted his representation on which the competent authority gave thorough consideration and then the disciplinary authority passed order of inflicting minor penalty to the applicant. The contention of the learned advocate of the respondents is that since no procedural irregularity or illegality has been committed in this case as such this Tribunal has got no jurisdiction to interfere with the order of disciplinary authority as well as the appellate authority and so this OA should be dismissed.

5. It is not denied by the applicant that even after cancellation of tender and forfeiture of EMD of M/s Mangal Construction & Company, the applicant had given advice to GMT, Udaipur for reconsideration of the

decision. According to the respondents this advice of the applicant was totally irregular and so given with ulterior motive. It is also not denied by the applicant that he was not given sufficient opportunity to explain the matter but his grievance is that his explanation was not correctly appreciated by the disciplinary authority/appellate authority and both the authorities held him guilty.

6. The law is settled on this point that the tribunal has no jurisdiction to re-evaluate the evidence or to go into the truth of allegation but Tribunal having power of judicial review can examine the procedural correctness of the decision making process. In this regard, I place reliance upon the decision of the Apex Court in the case of *Transport Commissioner, Madras-5 Vs. Thiru A. Radhakrishna Moorthy* reported in *JT 1994(7) SC 744*. Para 7 of the said decision which is relevant in this case is being incorporated below:

“So far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into – more particularly at a stage prior to the conclusion of the disciplinary enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence i.e., where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision making-process. For this reason the order of the Tribunal in so far as it goes into or discusses the truth and correctness of the charges, is unsustainable in law.”

7. Another decision on this point which is relevant is reported in *JT 1994(7) SC 492 (Government of Tamilnadu and another Vs.*

A.Rajapandian). Para 10 of the decision is relevant in this case and the same is being quoted below:

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matter or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

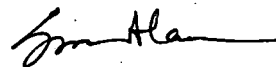
8. In the case of *Rai Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh & others*, JT 1997(3) SC 717 and in the case of *Sanchalakshri and another Vs. Vijayakumar Raghuvirprasad Mehta and another*, AIR 1999 SC 578 similar views were expressed by the Apex Court with regard to the jurisdiction of the Courts/Tribunals in interfering with the order of disciplinary authority in disciplinary proceedings.

9. Thus from the decisions referred above I am satisfied that if the disciplinary authority in passing the order of penalty has not committed any procedural mistake and has given full opportunity to the applicant of being heard and has passed a speaking order, which prima facie does not appear perverse, the Court or Tribunal has no jurisdiction to interfere with the order of the disciplinary authority/appellate authority. In the instant case I find that the charge levelled against the applicant is admitted, the applicant was

given sufficient opportunity to explain ⁻⁸⁻the charge, his explanation was found not satisfactory and the disciplinary authority by speaking and reasoned order found him guilty and accordingly the minor penalty was awarded to him. It is also established that the applicant was given opportunity for filing appeal and the appellate authority also considered his memo of appeal/representation and by a detailed and reasoned order upheld the finding of the disciplinary authority. I also do not find any irregularity in the procedure adopted by the respondents in awarding the punishment to the applicant nor any such procedural irregularity was pointed out to me by the learned advocate at the time of arguments. So I am of the view that so far this case is concerned the Tribunal cannot interfere with the order of punishment passed by the disciplinary/appellate authority against the applicant.

10. In the result I do not find any merit in this case as such this O.A. stands dismissed. In the circumstances of the case there will be no order as to costs.

Dated this the 1st day of March, 2011



JUSTICE S.M.M. ALAM
JUDICIAL MEMBER

Ks.

दिनांक 21/4/16 के आदेशानुसार
वेरी अवस्थिति में दिनांक 9/6/16
को भाग-IA व III नष्ट किए गए ।

अनुभाग अधिकारी
केंद्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर